

REMARKS/ARGUMENTS

This Amendment is responsive to the office action mailed July 8, 2003.

In that Office Action, the Examiner initially rejected claims 1 and 6-9 under 35 U.S.C. 35 U.S.C. § 102(b) as being "anticipated" by U.S. Patent No. 4,635,710 (*Shelley*), claim 13 under 35 U.S.C. § 102(b) as being "anticipated" by U.S. Patent No. 5,550,350 (*Barnes*), claim 2 under 35 U.S.C. § 102(a) as having been "obvious" over *Shelley* in view of U.S. Patent No. 6,283,382 (*Fitzmeyer*), claim 3 under 35 U.S.C. § 103(a) as having been "obvious" over *Shelley* in view of U.S. Patent No. 6,021,646 (*Burley*), claims 10 and 11 under 35 U.S.C. § 103(a) as having been "obvious" over *Shelley* in view of U.S. Patent No. 2,726,593 (*Lahti*), and claims 14-17, 19-23, 25-31 and 33 under 35 U.S.C. § 103(a) as having been "obvious" over U.S. Patent No. 5,415,155 (*Cohen*).

The Examiner found that claims 4, 5, 12, 18, 24, 32 and 34-37 would be allowable if rewritten in independent form to include all the limitations of their respective base claim and any intervening claims.

This application now contains a total of forty-four claims. Of these, claims 1, 14, 29 and 38-41 are presented in independent form. Further to the Examiner's statement of allowable subject matter, Applicant's new claims 38-44 are simply allowed claims 18, 24, 32 and 34-37 rewritten in independent form to include all the limitations of their original respective base claim and any intervening claims. As indicated by the Examiner, new claims 38-44 are in condition for immediate allowance.

Claims 2-13, as amended, are dependent on independent claim 1 and are to be construed as incorporating all the limitations of claim 1. 35 U.S.C. § 112. If claim 1 distinguishes patentably from the prior art and is allowable, then each of its trailing dependent claims must so distinguish and be allowable. *In re Fine*, 837 F.2d 1371, 1376, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). Claims 15-

28 are dependent on independent claim 14 and are to be construed as incorporating all the limitations of claim 14. Claims 30-37 are dependent on independent claim 29 and are to be construed as incorporating all the limitations of claim 29. Consequently, the following the remarks will focus on the reasons why the cited references do not teach or suggest, either implicitly or inherently, the combination of features set forth in claims 1, 14, and 29, respectively.

The Examiner rejected claim 1 under 35 U.S.C. § 102(b) as being "anticipated" by *Shelley*. In particular, the Examiner stated that *Shelley* "discloses radiant heat transfer panel comprising a form tray (26). The tray defines a thermal volume (30) and a conduit channel (14). The volume contains the thermal mass." It is respectfully submitted that the Examiner's statement that sheet member 26 in *Shelley* defines a conduit channel is incorrect. While the sheet member (26) appears to define a comparable containment space, it does not define a conduit channel. *Shelley* teaches a snap on linear sheet (26) and an extruded plate (14). The plate (14) defines a saddle (16) which supports tubing (18). Between and separating the extruded plate (14) and the linear sheet (26) is a filler material (30). The linear sheet member (26) taught by *Shelley* defines a space containing filler material (30) but does not define a conduit channel, and the plate (14) taught by *Shelley* seems to define a conduit channel (saddle 16) but does not define a space that contains a thermal mass.

In contrast, claim 1 calls for a tray that defines both a containment space and a conduit channel. Neither the plate (14) nor the sheet member (26) taught by *Shelley* define both a containment space and a conduit channel. Thus, there is no teaching or suggestion, either implicitly or inherently, of a radiant heat panel system having a tray that defines both a containment space and a conduit channel. Accordingly, Applicant respectfully requests reconsideration of the rejection of claim 1 as being "anticipated" under 35 U.S.C. § 102. In order to "anticipate" a claim, a reference must disclose each and every element and limitation of the claim. *Hoover v. Custom Metal Craft*,

*Inc.*, 66 F.3d 299, 302, 36 USPQ 1101, 1103 (Fed. Cir. 1995).

The Examiner rejected claims 14 and 29 based on *Cohen*. As it presently stands, claim 14 calls for a radiant heat system comprising multiple radiant heat transfer panels comprising a formed tray defining a containment space and a conduit channel, the space containing a thermal mass. *Cohen* does not teach a panel having both a tray and a thermal mass. Nor does *Barnes*, another reference relied on by the Examiner, teach a panel having both a tray and a thermal mass.

Similarly, as it presently stands, claim 29 calls for the step of providing multiple panels, each of the panels having a formed tray defining a containment space and a conduit channel. Again, neither *Barnes* nor *Cohen* teach a panel having both a tray and a thermal mass. Thus, there is no teaching of a system of multiple panels in which each panel includes a tray and a thermal mass. Accordingly, Applicant respectfully requests further examination and reconsideration of the rejection of claims 14 and 29, as amended.

Applicant has made additional amendments to tighten up certain of the claims. Claim 1 and claim 2 have been amended to more clearly indicate that a fluid conduit is not an element of the claim. Also, in claim 1 the term "thermal volume" has been replaced with "containment space" to make it clear that this element is not necessarily produced or caused by heat and to remove any implication, often associated with the word "volume", of a particular measurement. Claims 3, 10 and 21 have been amended to comport with proper Maskush conjunctive format, and claims 9, 13, and 36 now depend on intervening dependent claims. Editorial changes have been made to claims 5 and 24.

This Amendment is believed to be fully responsive to the office action of July 8, 2003, is believed to squarely address each and every ground for objection and rejection raised by the Examiner, and is further believed to materially advance the prosecution of this application toward immedi-

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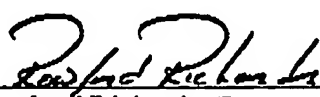
ate allowance.

Formal allowance of all claims in the light of this Amendment is, therefore, courteously solicited.

Respectfully submitted,

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